

13 Am. Jur. 2d Carriers § 38

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Carriers

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Part One. In General

III. Regulation and Control of Carrier's Operations

B. State Regulation

§ 38. Delegation to administrative bodies

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, *Carriers* 1, 10

The power to regulate common carriers is generally delegated to commissions and other administrative bodies created for that purpose,¹ and as a general matter, this does not violate a constitutional prohibition against the delegation of legislative power.²

Some states' constitutions authorize a designated state administrative agency to exercise its plenary powers over common carriers, and absent specific legislation, such powers are absolute and unqualified.³ However, the legislature can divest this administrative agency of jurisdiction over a class of common carriers by passing specific legislation that occupies a regulatory field, thereby preempting the agency's control.⁴ The legislature divests this agency of its power by specifically restricting the agency's authority and retaining control itself over that class of common carriers.⁵ With this understanding, it has been held that statutes treating pipeline carriers that transport oil for hire in intrastate commerce as common carriers subject to the agency's regulation and allowing common carriers to construct such pipelines are not "specific legislation" to restrict the agency's regulatory powers over interstate carriers.⁶

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Footnotes

¹ Atchison, T. & S.F. Ry. Co. v. Railroad Commission of State of California, 283 U.S. 380, 51 S. Ct. 553, 75 L. Ed. 1128 (1931); State v. Jacksonville Terminal Co., 96 Fla. 295, 117 So. 869, 59 A.L.R. 324 (1928); Columbus & Greenville Ry. Co. v. Scales, 578 So. 2d 275 (Miss. 1991); Seward v. Denver & R. G. R. Co., 1913-NMSC-019, 17 N.M. 557, 131 P. 980 (1913); St. Clair Borough v. Tamaqua & Pottsville Electric Ry. Co., 259 Pa. 462, 103 A. 287, 5 A.L.R. 20 (1918); Occidental Chemical Corp. v. ETC NGL Transport, LLC,

425 S.W.3d 354 (Tex. App. Houston 1st Dist. 2011) (recognition of the delegation of regulation of common carrier oil and gas pipelines to the Texas Railroad Commission).

2 U.S. v. Illinois Cent. R. Co., 291 U.S. 457, 54 S. Ct. 471, 78 L. Ed. 909 (1934); State v. Atlantic Coast Line R. Co., 56 Fla. 617, 47 So. 969 (1908); Hammond Lumber Co. v. Public Service Commission, 96 Or. 595, 189 P. 639, 9 A.L.R. 1223 (1920); St. Clair Borough v. Tamaqua & Pottsville Electric Ry. Co., 259 Pa. 462, 103 A. 287, 5 A.L.R. 20 (1918); State ex rel. Public Service Commission v. Baltimore & O. R. Co., 76 W. Va. 399, 85 S.E. 714 (1915).

3 Thompson v. Heineman, 289 Neb. 798, 857 N.W.2d 731 (2015) (state Public Service Commission).

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6 Thompson v. Heineman, 289 Neb. 798, 857 N.W.2d 731 (2015).

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